

Rule 4. Service of Summons and Complaint

(a) Summons; Service by the Clerk. In any action required to be commenced by filing a summons only, service of the summons shall be made by the clerk of the court as follows:

(1) Upon the United States, by serving the Attorney General of the United States, by delivering or by mailing a copy of the summons to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) When the action is described in 28 U.S.C. § 1581(a) or (b), the clerk shall, in addition to the service prescribed in paragraph (1) of this subdivision (a), also serve the Secretary of the Treasury by mailing a copy of the summons to the director for the customs port in which the protest was denied or in which the liquidation of an entry is contested and to the Assistant Chief Counsel for International Trade Litigation, United States Customs Service.

(3) When the action is described in 28 U.S.C. § 1581(b), the clerk shall, in addition to the service prescribed in paragraphs (1) and (2) of this subdivision (a), also mail a copy of the summons to the consignee or agent of the consignee involved in each entry included in the action.

(4) When the action is described in 28 U.S.C. § 1581(c) and contests a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930, the clerk shall, in addition to the service prescribed in paragraph (1) of this subdivision (a), also mail a copy of the summons: to the Secretary, United States International Trade Commission, when a determination of that Commission is contested; and to the General Counsel, Department of Commerce, when a determination of that Department is contested.

(5) After making service as prescribed in this subdivision (a), the clerk shall return a copy of the summons, together with proof of service and a receipt for payment of the filing fee, to the person who filed the summons.

(b) Summons and Complaint; Service by Plaintiff. In any action required to be commenced by the concurrent filing of a summons and complaint, the plaintiff shall cause service of the summons and complaint to be made in accordance with this rule.

(c) Service.

(1) Service of a summons and complaint may be effected by any person who is not a party and who is at least 18 years of age. At the request of the plaintiff, however, the court may direct that service be effected by a United States marshal, deputy United States marshal, or other person or officer specially appointed by the court for that purpose. Such an appointment must be made when the plaintiff is authorized to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

(2) In an action commenced under 28 U.S.C. § 1581(d), the court is authorized to serve the summons and complaint where the action was commenced pro se and the plaintiff has failed to make service.

(d) Waiver of Service; Duty to Save Costs of Service; Request to Waive.

(1) A defendant who waives service of a summons does not thereby waive any objection to the jurisdiction of the court over the person of the defendant.

(2) An individual, corporation, or association that is subject to service under subdivision (e), (f), or (h) and that receives notice of an action in the manner provided in this paragraph has a duty to avoid unnecessary costs of serving the summons. To avoid costs, the plaintiff may notify such a defendant of the commencement of the action and request that the defendant waive service of a summons. The notice and request:

(A) shall be in writing and shall be addressed directly to the defendant, if an Individual, or else to an officer or managing or general agent (or other agent authorized by appointment or law to receive service of process) of a defendant subject to service under subdivision (h);

(B) shall be dispatched through first-class mail or other reliable means;

(C) shall be accompanied by a copy of the complaint;

(D) shall inform the defendant, by means of a text substantially in the form as set forth in Forms 1A and 1B of the Appendix of Forms, of the consequences of compliance and of a failure to comply with the request;

(E) shall set forth the date on which the request is sent;

(F) shall allow the defendant a reasonable time to return the waiver, which shall be at least 30 days from the date on which the request is sent, or 60 days from that date if the defendant is addressed outside any judicial district of the United States; and

(G) shall provide the defendant with an extra copy of the notice and request, as well as a prepaid means of compliance in writing. If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure be shown.

(3) A defendant that, before being served with process, timely returns a waiver so requested is not required to serve an answer to the complaint until 60 days after the date on which the request for waiver of service was sent, or 90 days after that date if the defendant was addressed outside any judicial district of the United States.

(4) When the plaintiff files a waiver of service with the court, the action shall proceed, except as provided in paragraph (3), as if a summons and complaint had been served at the time of filing the waiver, and no proof of service shall be required.

(5) The costs to be imposed on a defendant under paragraph (2) for failure to comply with a request to waive service of a summons shall include the costs subsequently incurred in effecting service under subdivision (e), (f), or (h), together with the costs, including a reasonable attorney's fee, of any motion required to collect the costs of service.

(e) Service Upon Individuals Within a Judicial District of the United States. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in any judicial district of the United States:

(1) pursuant to the law of the state in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of general jurisdiction of the state; or

(2) by delivering a copy of the summons and complaint to the individual personally or by leaving copies thereof at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process.

(f) Service Upon Individuals in a Foreign Country. Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed, other than an infant or an incompetent person, may be effected in a place not within any judicial district of the United States:

(1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or

(2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

(g) Service Upon Infants and Incompetent Persons. Service upon an infant or an incompetent person in a judicial district of the United States shall be effected in the manner prescribed by the law of the state in which the service is made for the service of summons or other like process upon any such defendant in an action brought in the courts of general jurisdiction of that state. Service upon an infant or an incompetent person in a place not within any judicial district of the United States shall be effected in the manner prescribed by paragraph (2)(A) or (2)(B) of subdivision (f) or by such means as the court may direct.

(h) Service Upon Corporations and Associations. Unless otherwise provided by federal law, service upon a domestic or foreign corporation or upon a partnership or other unincorporated association that is subject to suit under a common name, and from which a waiver of service has not been obtained and filed, shall be effected:

(1) in a judicial district of the United States in the manner prescribed for individuals by subdivision (e)(1), or by delivering a copy of the summons and the complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant or

(2) in a place not within any judicial district of the United States in any manner prescribed for individuals by subdivision (f) except personal delivery as provided in paragraph (2)(C)(i) thereof.

(i) Service Upon the United States, and Its Agencies, Corporations, or Officers.

(1) Service upon the United States shall be effected by serving the Attorney General of the United States, by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to the Attorney-in-Charge, International Trade Field Office, Commercial Litigation Branch, Department of Justice.

(2) Service upon an officer or agency of the United States shall be effected by serving the United States, and by delivering or by mailing by registered or certified mail, return receipt requested, a copy of the summons and complaint to such officer or agency. If the agency is a corporation, the copy shall be delivered as provided in subdivision (h).

(j) Service Upon Foreign, State, or Local Governments.

(1) Service upon a foreign state or a political subdivision, agency, or instrumentality thereof shall be effected pursuant to 28 U.S.C. § 1608.

(2) Service upon a state, municipal corporation, or other governmental organization subject to suit shall be effected by delivering a copy of the summons and of the complaint to its chief executive officer or by serving the summons and complaint in the manner prescribed by the law of that state for the service of summons or other like process upon any such defendant.

(k) Territorial Limits of Effective Service.

(1) Service of a summons or filing a waiver of service is effective to establish jurisdiction over the person of a defendant

(A) who could be subjected to the jurisdiction of a court of general jurisdiction in the state in which service is made, or

(B) who is a party joined under Rule 14 or 19 and is served at a place within a judicial district of the United States, or

(C) who is subject to the federal interpleader jurisdiction under 28 U.S.C. § 1335, or

(D) when authorized by a statute of the United States.

(2) If the exercise of jurisdiction is consistent with the Constitution and laws of the United States, serving a summons or filing a waiver of service is also effective, with respect to claims arising under federal law, to establish personal jurisdiction over the person of any defendant who is not subject to the jurisdiction of the courts of general jurisdiction of any state.

(l) Proof of Service. If service is not waived, the person effecting service shall make proof thereof to the court. If service is made by a person other than a United States marshal or deputy United States marshal, the person shall make affidavit thereof. Proof of service in a place not within any judicial district of the United States shall, if effected under paragraph (1) of subdivision (f), be made pursuant to the applicable treaty or convention, and shall, if effected under paragraph (2) or (3) thereof, include a receipt signed by the addressee or other evidence of delivery to the addressee satisfactory to the court. Failure to make proof of service does not affect the validity of the service. The court may allow proof of service to be amended.

(m) Time Limit for Service. If a service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court upon motion or its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period. This subdivision does not apply to service in a foreign country pursuant to subdivision (f) or (j)(1).

PRACTICE COMMENT: The clerk is authorized by Rule 4(a) to make service of the summons only in those actions commenced by a summons, i.e., actions described in 28 U.S.C. § 1581(a) or (b), and only those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(2) or (3) of the Tariff Act of 1930. In all other actions, including those actions described in 28 U.S.C. § 1581(c) which contest a determination listed in section 516A(a)(1) of the Tariff Act of 1930, the plaintiff is required by Rule 4(b) to effect concurrent service of the summons and complaint.

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